

After these executions had been thus levied he was prevented from proceeding to make sale, by an injunction from this court obtained at the instance of these complainants ; who represented and claimed the interest of one of the corporators of *The Cape Sable Company*, against all the plaintiffs and defendants in those writs of *fiery facias*. After which, and while the injunction was in full force, by a decree of this court, passed with the consent of all the parties to the suit, all the property of *The Cape Sable Company*, including the whole of that on which the executions had been levied, was directed to be sold, and the proceeds brought in to be distributed among the creditors and parties in proportion to their respective claims ; and it has been sold accordingly.

The object of this petition is to recover the poundage fees to which the petitioner alleges he became entitled upon levying those executions.

It is perfectly clear, that a sheriff's right to poundage fees is a claim of a legal, not an equitable character. That he has a complete remedy at law, either by action, or by selling for the amount, by virtue of the execution that has been levied is certain, and admitted on all hands. The only doubt upon the subject, at common law, is, whether the plaintiff or the defendant is liable to him for them, in all or in what cases. But this sheriff has thought proper to present his claim for poundage fees to this court, in this case. It is, therefore, not only necessary, that he should establish his legal claim against one or other or all of these parties ; but, that he should also shew why he should be indulged in bringing that legal claim here ; and upon what ground or equitable bearing it is, that this court can allow itself to entertain jurisdiction of his case.

According to the common law, sheriffs were entitled to no fees whatever for executing a *fiery facias* or any other process. (*j*) But, in England, by an act of Parliament, passed in the year 1444, not applied here, some fees were allowed ; (*k*) and by the statutes passed in the year 1587 and 1716, not adopted here, they were allowed a certain compensation for their trouble, graduated according to the amount directed to be raised by the execution, called poundages fees from the manner in which they are estimated ; being so much per pound for the first hundred pounds ; and so much less for every pound above that. (*l*) These statutes do not extend

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(*j*) Co. Litt. 368 ; 2 Inst. 176, 210.—(*k*) 23 Hen. 6, c. 9 ; Kilty Rep. 227.—(*l*) 29 Eliz. c. 4 ; Kilty Rep. 85 ; 3 Geo. 1, c. 15, s. 16 ; Kilty Rep. 112.